

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





74-1725 ORIGINAL

In The  
**United States Court of Appeals**  
For The Second Circuit

JOYCE J. BEAM,

*Appellant,*

*vs.*

INTERNATIONAL ORGANIZATION OF MASTERS,  
MATES, AND PILOTS; THOMAS F. O'CALLAGHAN, As  
President of the International Organization of Masters, Mates,  
and Pilots; MASTERS, MATES AND PILOTS WELFARE  
PLAN; STEPHEN P. MAHER, As Administrator of the  
Masters, Mates, and Pilots Welfare Plan; H.M. STEGALL, As  
Chairman of the Board of Trustees of the Masters, Mates, and  
Pilots Welfare Plan; and MARTIN F. HICKEY, as Secretary  
of the Board of Trustees of the Masters, Mates, and Pilots  
Welfare Plan,

*Appellees.*

**JOINT APPENDIX**

ALBERT E. RICE  
*Attorney for Appellees*  
60 East 42nd Street  
New York, New York 10007  
(212) 986-8847

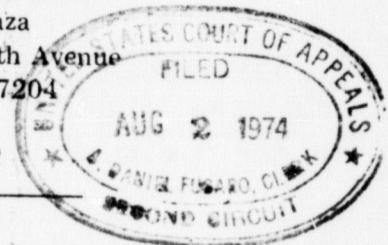
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CIVIL DOCKET  
UNITED STATES DISTRICT COURT

DOCKET ENTRIES

88 Civ. 2384

Jury demand date:

5/17/74

JUDGE PIERCE

Form No. 105 Rev.

TITLE OF CASE

ATTORNEYS

JOYCE J. BEAM

For plaintiff:

AGAINST,

JULIEN, BLITZ & SCHLESINGER, P.C.  
2 Lafayette Street,  
N.Y.C. N.Y. 10007  
962-8020

INTERNATIONAL ORGANIZATION OF MASTERS MATES AND PILOTS,  
EDWARD F. O'CALLAGHAN AS PRESIDENT OF THE INTERNATIONAL ORGANIZATION OF  
MASTERS MATES AND PILOTS, MASTERS, MATES AND PILOTS WELFARE  
PLAN, STEPHEN P. MAHER, ADMINISTRATOR OF THE MASTERS  
MATES AND PILOTS WELFARE PLAN, H.M. STEGALL AS CHAIR-  
MAN OF THE BOARD OF TRUSTEES OF THE MASTERS, MATES AND  
PILOTS WELFARE PLAN AND MARTIN F. HICKEY, AS SECRETARY  
OF THE BOARD OF TRUSTEES OF THE MASTERS, MATES, AND  
PILOTS WELFARE PLAN

For defendant:

Albert E. Rice  
60 E. 42nd Street, NYC 10017 986-8847

73 Civ. 2384

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
5 mailed X	Clerk	MAY 30 1973	John BoS	11 -	
		5/3/73	145 line		11 -
6 mailed X	Marshal	5/17/74	Julien	5 -	5 -
		6/1/74	Julien		
is of Action:	Docket fee				
AMOUNT OF \$20,000 due under ins.	Witness fees				
en arose at:	Depositions				

A



## Docket Entries

2a

JOYCE J. BEAM, VS. INTL ORGANIZATION OF MASTERS, ETC,

73 CIV. 2384

JUDGE PIERCE

Judge

DATE	PROCEEDINGS	
May 30-73	Filed Complaint. Issued Summons.	
Jun 4, 73	Filed Summons and marshals ret. Served: a International Organization of Masters Mates & Pilots. on 5/31/73. Thomas F.O'Callaghan on 5/31/73 Masters Mates & Pilots Welfare Plan on 5/31/73 Stephen P/Maher on 5/31/73 * Martin F.Hickey on 5/31/73 Unable to serve. * H.M. Stegall on 5/31/73 UNABLE TO SERVE.	
Jul-31-73	Filed ANSWER.	AE.
Sep-17-73	Filed Defts. Notice of Motion. Re: Dismiss complaint, summary judgment. rec. 9/28/73.	
Sep-17-73	Filed Defts. Brief in support of motion for summary judgment.	
Nov. 2, 73	Filed Pltffs. motion in opposition to defts. motion for summary judgment. ret. Sine Die.	
Apr 1, 74	Filed Memorandum Order. Ordered Defts motion for entry of summary judgment in their favor is granted. Settle Order on 10 days notice, by 5/6/74. Pierce J. (mailed notice)	
Apr 30, 74	Filed JUDGMENT of Defts - Ordered, Adjudged and Decreed that the complaint herein be and the same is hereby dismissed with prejudice -PIERCE, J. Judgment entered 5-1-74 -Clerk (Mailed Notice)	
May 17, 74	Filed Pltff's Notice of Appeal against final judgment entered 4-30-74. (Mailed Notice)	

A TRUE COPY

RAYMOND F. BURGHARDT, Clerk

By

*R. F. Burghardt*

Deputy Clerk

B

COMPLAINT (Filed May 30, 1973)  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

3a

----- x  
JOYCE J. BEAM,

Plaintiff,

-against-

INTERNATIONAL ORGANIZATION OF MASTERS,  
MATES, AND PILOTS; THOMAS F. O'CALLAGHAN,  
As President of the International Organization of  
Masters, Mates, and Pilots; MASTERS, MATES,  
AND PILOTS WELFARE PLAN; STEPHEN P. MAHER,  
As Administrator of the Masters, Mates, and  
Pilots Welfare Plan; H.M. STEGALL, As Chairman  
of the Board of Trustees of the Masters, Mates,  
and Pilots Welfare Plan; and MARTIN F. HICKEY,  
As Secretary of the Board of Trustees of the  
Masters, Mates, and Pilots Welfare Plan,

PLAINTIFF DEMANDS  
A TRIAL BY JURY

Defendants.  
-----x

Plaintiff, by her attorneys, JULIEN, BLITZ & SCHLESINGER,  
complaining against the defendants, hereby alleges:

JURISDICTION AND VENUE

1. Jurisdiction is based on 29 U.S.C. §185 and under the  
rules of diversity jurisdiction, inasmuch as the plaintiff and defendants  
are citizens of different states and the amount in controversy exceeds  
\$10,000, exclusive of interest and costs.



## Complaint

4a

2. Venue is placed within the Southern District of New York inasmuch as, upon information and belief, defendants' Masters, Mates, and Pilots Welfare Plan and International Organization of Masters, Mates, and Pilots have their principal place of business in said district and/or said defendants' officers or agents are engaged in representing or acting for employee members in said district.

### STATEMENT OF THE CLAIM

3. Upon information and belief, at all times hereinafter mentioned, the defendant International Organization of Masters, Mates, and Pilots was a labor organization.

4. Upon information and belief, at all times hereinafter mentioned, defendant Thomas F. O'Callaghan was the President of the International Organization of Masters, Mates, and Pilots.

5. Upon information and belief, at all times hereinafter mentioned, defendant Masters, Mates, and Pilots Welfare Plan was a nonprofit joint union and employer trust association for the benefit of the employees of the International Organization of Masters, Mates, and Pilots.

6. Upon information and belief, at all times hereinafter mentioned, defendant Steven P. Maher was the duly appointed and acting administrator of the Masters, Mates, and Pilots Welfare Plan.

7. Upon information and belief, at all times hereinafter mentioned, defendant H.M. Stegall was the Chairman of the Board of Trustees of the Masters, Mates, and Pilots Welfare Plan.

8. Upon information and belief, at all times hereinafter mentioned, defendant Martin F. Hickey was the Secretary of the Board of Trustees of the Masters, Mates, and Pilots Welfare Plan.

9. At all times hereinafter mentioned, plaintiff was a citizen of the State of Oregon.

10. The Masters, Mates, and Pilots Welfare Plan was adopted pursuant to an agreement reached between employers and labor organizations representing employees in the shipping industry, said industry being an industry engaged in commerce and affecting commerce.

11. Russell Beam, plaintiff's husband, was a member of the International Organization of Masters, Mates, and Pilots and was entitled to certain benefits as prescribed by the Masters, Mates, and Pilots Welfare Plan, including certain insurance benefits for death and accidental death.

12. Plaintiff was the wife and the designated beneficiary of insurance benefits of Russell Beam under the terms of the Masters, Mates, and Pilots Welfare Plan.

13. Under the terms of the described insurance plan with the defendant Master, Mates, and Pilots Welfare Plan, Russell Beam's designated beneficiary, the plaintiff herein, was entitled to \$20,000.00 in the event of his death from natural causes and an additional sum of \$20,000.00 in the event that Russell Beam's death resulted from accidental causes.

14. On or about February 12, 1971, Russell Beam suffered personal injuries in a fire, which injuries resulted in his death on March 2, 1971.

15. The death of Russell Beam resulted from accidental causes and plaintiff is, therefore, entitled to receive both the ordinary death benefit of \$20,000.00 and the accidental death benefit of \$20,000.00.



**Complaint**

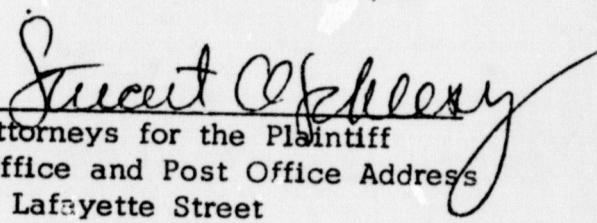
**6a**

16. Shortly after the death of Russell Beam, plaintiff duly filed her proof of loss with the defendants; however, more than six months have elapsed and defendants have failed to pay the accidental death benefit claim of \$20,000. The plaintiff is entitled to recover this amount together with her reasonable attorneys fees. The denial of plaintiff's claim was an arbitrary and capricious act by defendants, and was not in accordance with law.

WHEREFORE, plaintiff demands judgment from the defendants in the sum of \$20,000.00, together with her reasonable attorney fees and interest,  
/ costs and disbursements.

JULIEN, BLITZ & SCHLESINGER

BY:

  
Attorneys for the Plaintiff  
Office and Post Office Address  
2 Lafayette Street  
New York, New York 10007

ANSWER (Filed July 31, 1973)  
IN THE UNITED STATES DISTRICT COURT

7a

FOR THE SOUTHERN DISTRICT OF NEW YORK

---

JOYCE J. BEAM,

Plaintiff

-against-

x  
x  
Civil Action

File No 73 Civ 2384

Judge Pierce

INTERNATIONAL ORGANIZATION OF MASTERS,  
MATES AND PILOTS; THOMAS F. O'CALLAGHAN,  
as President of the International  
Organization of Masters, Mates and Pilots;  
MASTERS, MATES AND PILOTS WELFARE PLAN;  
STEPHEN P. MAHER, as Administrator of the  
Masters, Mates and Pilots Welfare Plan;  
H.M. STEGALL, as Chairman of the Masters,  
Mates and Pilots Welfare Plan; and Martin  
F. HICKEY, as Secretary of the Masters, Mates  
and Pilots Welfare Plan,

Defendants

---

ANSWER

The Defendants hereby answer the complaint, upon  
information and belief, as follows:

1. Deny each and every allegation of Paragraphs 1 and  
10, except admit that the Masters, Mates and Pilots Welfare  
Plan is a trust established under an Agreement and Declaration  
of Trust, dated as of August 1, 1950, by and between  
the International Organization of Masters, Mates and Pilots  
and various steamship companies having collective bargaining  
agreements with the Union, to provide welfare benefits for



Answer

8a

certain licensed deck officers employed under and covered by such agreements.

2. Deny they have sufficient knowledge or information to form a belief as to the allegations in Paragraphs 9, 11 and 12 of the complaint, except that they admit that Russell Beam was an "eligible" employee under the provisions of the Masters, Mates and Pilots Welfare Plan, and that he, his dependants and named beneficiaries might therefore become entitled to certain benefits thereunder, and that one "Jacqueline Joyce Beam" was named as a beneficiary of Russell Beam.

3. Deny each and every allegation of Paragraph 13 of the complaint, except admit that under the specific provisions and conditions set forth in the Rules and Regulations of the Masters, Mates and Pilots Plan certain death and accidental death and dismemberment benefits might become payable with respect to an eligible employee.

4. Deny each and every allegation of Paragraph 14 of the complaint, except admit Russell Beam died on March 21 1971.

5. Deny each and allegation of Paragraphs 15 and 16 of the complaint.

FOR A FIRST AND SEPARATE AFFIRMATIVE DEFENSE

The aforesaid defendants hereby submit a first and separate defense to the complaint and allege on information and belief as follows:

6. Reallege, reaffirm and restate each and every statement contained in Paragraphs 1 to 5 inclusive of this answer.

7. That the operation of the Masters, Mates and Pilots Welfare Plan is the sole responsibility of eight Trustees appointed by the Employers and eight Trustees appointed by the Organization; that no individual Trustee, no employee or administrative official, nor any other party named herein has any authority or has exercised any authority to grant or withhold benefits provided by the Welfare Plan.

8. That the individual defendants, Thomas F. O'Callaghan, Stephen P. Maher, H.M. Stegall and Martin F. Hickey have no individual liability for any claims for benefits provided by the Masters, Mates and Pilots Welfare Plan, and are improperly named as defendants herein.

9 That under the provisions of the Masters, Mates and Pilots Pension and Welfare Plan, plaintiff has already received a payment of \$21,010.34 on account of the death of Russell Beam, which is more than would properly have been payable if the plaintiff's claims are justified; that if the plaintiff is entitled to any payment hereunder, the defendant is entitled to an offset of \$1,010.34.

10. That the Trustees of the Masters, Mates and Pilots Welfare Plan, in denying plaintiffs claims for "accidental death" benefits did not act capriciously or arbitrarily, but did act reasonably and within the duties and authority given them under the said Agreement and Declaration of Trust.

WHEREFORE, Defendants demand judgment dismissing



Answer

10a

complaint and such other and further relief which the Court may deem proper, together with costs.

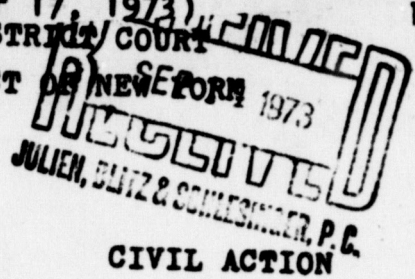
Albert E. Rice

Albert E. Rice

Attorney for Defendants  
Office and Post Office Address  
60 E. 42nd St.  
New York, N.Y. 10017  
Tel: 986-8847

NOTICE OF MOTION (Filed September 17, 1973)  
IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

11a



-----X  
JOYCE J. BEAM,  
Plaintiff

vs.

73 Civ. 2384

INTERNATIONAL ORGANIZATION OF MASTERS,  
MATES AND PILOTS, et al.  
Defendants

Judge Pierce

-----X  
NOTICE OF MOTION

Sirs: PLEASE TAKE NOTICE that upon the affidavit of Stephen P. Maher, dated September 6, 1973, the statement of material facts, and upon all the pleadings herein, a motion will be made pursuant to Rule 56 of the Rules of Civil Procedure in Room 2603, before the Honorable Lawrence W. Pierce, in the Federal Court House at Foley Square, City, County and State of New York, on the 28th day of September, 1973, at 10 o'clock in the fore noon of that day, or as soon thereafter as counsel can be heard, for an order dismissing the complaint of Plaintiff and directing that summary judgment be entered herein in favor of the Defendants, and for such other and further relief as may be just and proper.

New York, N.Y.  
September 7, 1973

Yours, etc.

Albert E. Rice  
Albert E. Rice  
Attorney for Defendants  
60 E. 42nd St.  
New York, N.Y. 10007  
Tel: 986-8847

To:  
Julian, Blitz & Schlesinger  
2 Lafayette St.  
New York, N.Y. 10007  
Attorneys for Plaintiff



AFFIDAVIT OF STEPHEN P. MAHER IN SUPPORT OF MOTION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

12a

\_\_\_\_\_  
JOYCE J. BEAM,

Plaintiff

CIVIL ACTION

vs.

73 Civ. 2384

INTERNATIONAL ORGANIZATION OF  
MASTERS, MATES AND PILOTS, et. al.  
Defendants

Judge Pierce

\_\_\_\_\_  
AFFIDAVIT

State of New York )  
County of New York ) ss:

STEPHEN P. MAHER, being duly sworn, deposes and says:

I am the Administrator of the Masters, Mates and Pilots Welfare Plan, and a defendant herein, and I am familiar with all matters involved in this case. I make this affidavit in support of a motion for summary judgment on behalf of the defendants.

I believe there is no dispute as to the facts in this case, and I will review them generally, and then set forth the details involved.

The MM&P Welfare Plan is a labor-management trust established in 1950 to provide such benefits as the Trustees might determine for eligible licensed deck officers in the American Merchant Marine.

Among the benefits provided are a death benefit of \$20,000. and an accidental death benefit of an additional \$20,000; with a provision that certain guaranteed pension payments would be made instead, if they exceeded the total amount payable by reason of death.

March 2, 1971. He had been involved in what has been assumed to have been an accidental fire on February 12, 1971, and was hospitalized until his death. The plaintiff applied for death benefits as his named beneficiary.

After review of the application and the evidence submitted, and after independent inquiries, the Trustees of the Welfare Plan determined that

- a) Decedent was an eligible employee
  - b) His beneficiary was entitled to the death benefit of \$20,000, or a higher guaranteed pension payment.
  - c) The accidental death benefit was not payable.
- Plaintiff was paid the higher pension benefit of \$22,010.34.

The MM&P Welfare Plan

The MM&P Welfare Plan was established by an Agreement and Declaration of Trust on August 1, 1950, as a result of collective bargaining agreements between the International Organization of Masters, Mates and Pilots and various American-flag steamship companies on the Atlantic and Gulf coasts. As required by Section 302 of the federal Labor-Management Relations Act of 1947 (29 U.S.C. Sec. 186), the fund's trustees are equally divided between labor representatives and management representatives. Under the provisions of the Trust Agreement, the trustees are required to act jointly by majority vote, and no individual trustee has authority to take any independent action.

The Trustees have been given broad authority with respect to the determination, scope and interpretation of



In Section 1 of Article IV of the said Agreement and Declaration of Trust, setting for the "Authority of the Trustees," it is provided:

"1. Benefits. The Trustess, by majority vote, shall have full authority to determine all questions of the nature, amount and duration of benefits to be paid under the Plan based on what it is estimated the Fund can provide without undue depletion or excessive accumulation."

In Section 2 of the same Article IV it is provided:

"2. Coverage and Eligibility. The Trustees, by majority vote, shall have full authority to determine all questions of coverage and eligibility to participate in and receive the benefits of the Plan and shall have the power to construe the provisions of this Agreement and the terms used herein and any such questions so determined or any construction so adopted by the majority of the Trustees shall be binding upon all parties and persons concerned."

The Rules and Regulations adopted by the Trustees set forth the various benefits provided by the Welfare Plan. Article XIV of these Rules and Regulations is as follows:

"Amendment and Termination

"In order that the Trustees may carry out their obligation to maintain within the limits of the funds available to them a sound and economic program dedicated to providing the maximum benefits for Employees as a whole, the Trustees expressly reserve the right in their sole discretion and without notice to Employees, Employers, the Union or others affected hereby, but upon a non-discriminatory basis .....

\*\*\*\*

(d) to interpret the provisions of these Rules and Regulations."

THE OTHER DEFENDANTS

Based upon their relationship to the MM&P Welfare Plan, it appears that the other defendants in this case have no legal responsibility for or control over any of the benefits provided by the Plan, and were improperly joined herein.

Pilots is the union which, with the Employers, established the MM&P Welfare Plan Trust pursuant to collective bargaining. The Union nominates one-half of the number of Trustees, but has no further authority over their actions as Trustees.

Thomas F. O'Callaghan, as President of the International Organization of Masters, Mates and Pilots, similarly has no authority or control over the Trustees.

H. M. Stegall and Martin W. Hickey, as Chairman and Secretary, respectively, of the MM&P Welfare Plan, are individual trustees of the Plan. However, as individual trustees they have no authority to act on any matters involving the Plan, and may only act jointly with the other Trustees. Their positions as Chairman and Secretary grant them no additional power or authority over the determination or payment of benefits.

Stephen P. Maher, as Administrator of the Masters, Mates and Pilots Welfare Plan. Your deponent is merely an employee of the Trustees. I have no authority to act on any matters, except as specifically directed by the Trustees, and they have no authority to delegate any discretion to others with respect to the payment of benefits.

#### THE DEATH BENEFITS

The benefits of the Welfare Plan involved herein are provided in Article III of the Rules and Regulations, the full applicable provisions of which are attached hereto as Exhibit A.

It appears that the dispute herein is based on the provisions of Section 6 of Article III, as follows:

"Section 6. Death of Disemberment by Accidental Means. If an Employee, while eligible hereunder, suffers any of the losses described in Section 7 of this Article, as a result of bodily injuries sustained solely through external, violent and accidental means, directly and independently of all other causes, and within ninety days from the date of such injuries, the



Affidavit of Stephen P. Maher in Support of Motion 16a  
Trustees shall pay to the Employee, if living,  
otherwise to the beneficiary, the amount of  
benefit specified for such loss in Section 7  
of this Article, provided, however, that no  
payment shall be made for any loss caused  
wholly or partly, directly or indirectly, by

(a) disease, or bodily or mental infirmity  
or medical or surgical treatment  
thereof; \*\*\*"

FACTS LEADING TO THE DENIAL OF CLAIM

The Plaintiff submitted to the Trustees an application  
for death benefits on March 11, 1971, and included a copy  
of the official death certificate, which is attached hereto  
as Exhibit B. This certificate stated that the cause of

death was "acute and chronic alcoholism"  
due to, or as a consequence of  
"acute and chronic alcoholism".

The certificate also stated that as a condition contributing  
to death, but not related to the foregoing, were

"25% third degree body surface burns."

In the light of this certificate, the Welfare Plan  
office requested a further explanation from Dr. Philip F.  
Parshley, the doctor who had treated the decedent from the  
date of the fire on February 12th, until his death on March 2nd,  
and who had stated that he had considered the autopsy which  
had been performed in reaching his conclusions as to the  
cause of death when he signed the death certificate.

The answer of Dr. Parshley, which is attached as  
Exhibit C, indicated that decedent was on a periodic alcoholic  
binge when the fire occurred, and that his existing chronic  
pancreatitis and excessive drinking, together with the  
shock of the burns and withdrawal from liquor, led to the  
acute pancreatitis from which he died.

Upon receipt of this letter, the Trustees referred  
the letter and other records to Dr. Joseph B. Logue of  
Brooklyn, who for many years has been the medical advisor

Affidavit of Stephen P. Maher in Support of Motion  
and medical arbiter for the Trustees. His reply is  
attached hereto as Exhibit D, and was even stronger in  
ruling out accidental death.

17a

Upon the basis of the death certificate and the  
opinions of Dr. Parshley and Dr. Logue, the Trustees  
determined that the decedent had not died "as a result of  
bodily injuries sustained soley through external, violent and  
accidental means, directly and independently of all other  
causes," and that death was caused "wholly or partly,  
directly or indirectly, by disease, or bodily or mental  
infirmity."

Although the plaintiff has proceeded to litigation  
in Oregon and New York since mid-1972, no further evidence  
or opinions have ever been presented to the Trustees in  
support of the claim.

Stephen P. Maher

Sworn to before me this  
6<sup>th</sup> day of September, 1973

Albert E. Rice

ALBERT E. RICE  
Notary Public, State of New York  
No. 60-3746659  
Qualified in Westchester County  
Cerk. filed in N. Y. Co. Clerk's Off.  
Commission Expires March 30, 1978



**EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT**

ARTICLE III

DEATH AND ACCIDENTAL DISMEMBERMENT BENEFITS

Section 1. Subject to the terms and conditions applicable to this coverage, upon receipt of due proof at the principal office of the Trustees of the death of an Eligible Employee by any cause other than a risk or peril which is excluded hereunder, the Trustees shall pay to the beneficiary whichever of the following death benefits is appropriate:

- (a) Death benefit of \$5,000 or
- (b) Extended death benefit of \$20,000.

Section 2. Extended Benefits.

The beneficiary of an Employee who meets the requirements of Article II, Section 5, shall receive the Extended Death Benefit, provided, however, that no Extended Death Benefit shall be payable in any case unless the beneficiary eligible to receive the benefit is a member of the immediate family of the decedent, which shall be deemed to include only his spouse, children and mother and father. (Amendment No. 50 - Adopted January 25, 1973).  
\*\*\*\*\*

Section 6. Death or Dismemberment by Accidental Means

If an Employee, while eligible hereunder, suffers any of the losses described in Section 7 of this Article, as a result of bodily injuries sustained solely through external, violent and accidental means, directly and independently of all other causes and within ninety days from the date of such injuries, the Trustees shall pay to the Employee, if living, otherwise to the beneficiary, the amount of benefit specified for such loss in Section 7 of this Article, provided, however, that no payment shall be made for any loss caused wholly or partly, directly or indirectly, by

- (a) disease, or bodily or mental infirmity, or medical or surgical treatment thereof; or
- (b) ptomaines, or bacterial infections, except infection introduced through a visible wound accidentally sustained; or

EXHIBIT A



Exhibit A - Article III of the Rules and Regulations 19a

(c) suicide while sane or insane, or intentionally self-

inflicted injury; or

(d) war, or any act of war, whether declared or undeclared.

Section 7. Schedule of Indemnities

The "full amount" of benefits for death or dismemberment by accidental means shall be \$20,000 if the Employee was eligible for Extended Benefits. If the Employee was not eligible for Extended Benefits, the "full amount of benefits" shall be \$5,000.00.

(a) The full amount of insurance shall be payable for loss of:

Life

Both hands

Both feet

One hand and one foot

Sight of both eyes

One hand and sight of one eye

One foot and sight of one eye

(b) One-half of the full amount of insurance shall be paid for loss of:

Sight of one eye

One hand

One foot

CERTIFICATE OF DEATH

Local File Number:

State file number \_\_\_\_\_

DECEASED - NAME		First Middle Last		DATE OF DEATH (month, day, year)	
RUSSELL LEONARD HAROLD BRIAN				March 2, 1971	
RACE White, Negro, American Indian, etc. (specify)		SEX	AGE - Last birthday (years)	DATE OF BIRTH (month, day, year)	
1. White		4. Male	5a. 46	6. February 17, 1925	
COUNTY OF DEATH		CITY, TOWN, OR LOCATION OF DEATH		HOSPITAL OR OTHER INSTITUTION - NAME (if not in either, give street and number)	
7a. Multnomah		7b. Portland		7c. Emanuel Hospital	
STATE OF BIRTH (if not in U.S.A., name country)		CITIZEN OF WHAT COUNTRY		MARRIED, NEVER MARRIED, WIDOWED, DIVORCED (specify)	
8. Rome, Georgia		9. USA		10. Married	
SOCIAL SECURITY NUMBER		USUAL OCCUPATION (give kind of work done during most of working life, even if retired)		KIND OF BUSINESS OR INDUSTRY	
12. 256 26 6025		13a. Merchant Officer		13b. Master Mates & Pilots	
RESIDENCE - STATE		COUNTY	CITY, TOWN, OR LOCATION	STREET AND NUMBER OR R.F.D.	
14a. Oregon		14b. Multnomah	14c. Portland	14d. 4057 No. Castle Avenue	
FATHER - NAME first middle last		MOTHER - Maiden Name first middle last		INFORMANT - NAME and relationship to deceased	
15. Richard Beam		16. Emma Truitt		17. Jacqueline Beam - Wife	
PART I. DEATH WAS CAUSED BY: (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), and (c))					
18. Immediate cause					
(a) Acute & chronic pancreatitis					
(b) due to, or as a consequence of					
(c) Acute & chronic alcoholism					
CONDITIONS, if any, which give rise to immediate cause (a), stating the underlying cause last					
18 days chronic 10 yrs over 12 yrs					
PART II. OTHER SIGNIFICANT CONDITIONS: conditions contributing to death but not related to cause given in Part I (a)					
25% third degree body surface burns					
ACCIDENT (specify yes or no)	DATE OF INJURY (month, day, year)	HOUR	NATURE OF INJURY OCCURRED (enter nature of injury in part I or part II, item 18)		
20a. Yes	20b. 2/12/71	20c. 2:55	Patient allegedly in fire at BRONXX Motel		
INJURY AT WORK (specify yes or no)	PLACE OF INJURY at home, farm, street, factory, office building, etc. (specify)	LOCATION (street, P.O. No., city or town, county, state)			
21a. No	21b. Motel	21c. 656 H. Outerstate, No. 8, Portland, Oregon			
CERTIFICATION - PHYSICIAN	month day year	month day year	DATE OF INJURY	DATE OF DEATH	DATE OF SIGNATURE
I attended the deceased from:	2 1 71	3 2 71	3 2 71	3 2 71	3 2 71
PHYSICIAN - SIGNATURE	NAME (type or print)		degree or title	DATE SIGNED (month, day, year)	
22a. Philip F. Parshley, Jr.	22b. Philip F. Parshley, Jr., M.D.		22c. 3/3/71		
MAILING ADDRESS - PHYSICIAN	23. 2800 N. Vancouver Avenue, #218 Portland, Oregon 97227				
BURIAL, CREMATION, REMOVAL, MAUS (specify)	CEMETERY OR CREMATORY - NAME	LOCATION	CITY OR TOWN	STATE	DATE (month, day, year)
24a. Burial	24b. Willamette National	24c. Portland	Oregon	24d. 3/5/71	
FUNERAL DIRECTOR - SIGNATURE	FUNERAL HOME - NAME AND ADDRESS (street, city or town, state, zip)				
25a. THE LITTLE CHAPEL of the Chimes	Portland, Oregon				
REGISTRAR - SIGNATURE	DATE RECEIVED BY LOCAL REGISTRAR		DATE RECEIVED BY STATE REGISTRAR		
26a. MAR 9 1971	26b. MAR 9 1971		27.		
RESERVED FOR REGISTRAR'S USE					

VS-2 R-48

**EXHIBIT B - APPLICATION FOR DEATH BENEFITS**

208

STATISTICS OF OREGON,

(COUNTY OF MULTNOMAH)

This is to certify that the foregoing is a reproduction of the original record which was filed with the Multnomah County Division of Public Health.

(Seal)

Date \_\_\_\_\_

— 11 —

Deputy Registrar of Vital Statistics

**Register.**

W. H. C.



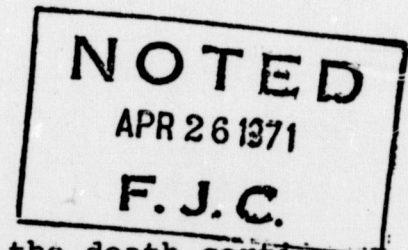
THE PORTLAND SURGICAL CENTER  
SUITE 2182800 NORTH VANCOUVER AVENUE  
PORTLAND, OREGON 97227  
TELEPHONE 266-7535HUGH D. COLVER, M.D.  
JACK B. BLUMBERG, M.D.  
LEROY E. GROSHONG, M.D.  
RODLICK L. JOHNSON, M.D.  
PHILIP F. PARSHLEY, JR., M.D.  
SURGEONS

April 15, 1971

Fred J. Criscuolo, Claims Manager  
Masters, Mates and Pilots Welfare Plan  
39 Broadway  
New York, New York 10006

Re: Russell Beam

Dear Mr. Criscuolo:



I can well understand your confusion regarding the death certificate on Mr. Beam.

I think he was admitted to Emanuel Hospital on February 12, 1971 with the outward appearance of having a 25% third degree burn. The patient's history, obtained mostly from his wife at that time, was that he had had a chronic alcoholic problem mostly in the form of acute binge drinking for many years. An episode of apparently documented pancreatitis occurred approximately ten years prior to this. The patient was allegedly on one of his alcoholic binges, living in a motel room here in Portland, when the fire occurred on the 12th of February, 1971. He was admitted to Emanuel Hospital and treated as an acute burn of the above stated body surface area. As with most of this extent, a nasogastric tube was passed into the stomach and he was put on intermittent suction. It became apparent, within 48 hours, that his progress was of an abnormal course. In most instances, the nasogastric can be removed within 24 hours and oral intake established. This was definitely not possible in Mr. Beam, and, in addition, his hematocrit fell more rapidly than is usually seen. He required multiple blood transfusions early in his course and within a few days it was apparent that he had a large abdominal mass. He never during his hospitalization established gastrointestinal continuity so that he could be fed by mouth. Our diagnosis was that he had an acute pancreatitis with a possible pseudocyst to the pancreas.

On the 11th post-burn day he was taken to surgery because of failure to improve, and a laparotomy and insertion of a gastrostomy tube, jejunostomy tube for feeding, multiple drains, and lysis

EXHIBIT C

Page Two

Re: Russell Beam

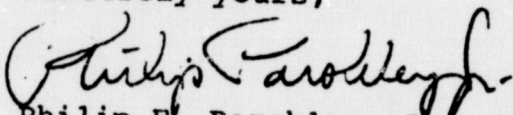
April 15, 1971

of adhesions were carried out. What was felt to be a pancreatic cyst was drained through the posterior wall of the stomach. His course from then until his death seven days later was that of a steady downhill progression.

In trying to make a determination as to whether this was a death due to an accident or an illness I think the following rather logical sequence will apply. The patient, in an acute alcoholic binge, was seriously burned. The extent of his burn at his age, with his past history of alcoholism, carried a significant risk of mortality. The incident of the burn, quite naturally, interrupted his alcohol intake and at the same time produced a massive body stress. This particular combination of circumstances is a well known etiologic factor for development of an acute massive pancreatitis which occurred in this instance. The pancreatitis itself was the cause of his death and not a complication of the burn surface itself. However, I think that one could well say that the occurrence of the accident led to a series of circumstances resulting in death.

I hope I have not confused you with this logic and if I can be of any further assistance in helping you to understand this, I would be most happy to do so.

Sincerely yours,



Philip F. Parshley, Jr., M.D.

PFP gl  
(meDic)

NO  
APR  
F

NOTED  
APR 20 1971  
F.J.C.



JOSEPH B. LOGUE, M. D.  
MEDICAL DIRECTOR

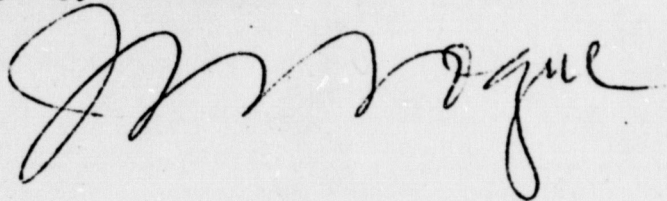
~~CONFIDENTIAL~~  
965-2140-1-2-3-4-

July 1, 1971

TO: Fred J. Criscuolo  
FROM: Dr. Logue  
SUBJECT: RUSSELL BEAM

After a review of the records, death certificate, and consultation with my associate, it is the opinion that the cause of death was Acute Exacerbation of a Chronic Pancreatitis.

It is also the opinion of the undersigned that there is not sufficient evidence to warrant an expression of opinion as whether the cause of death was, in any way, accidental.



JBL/fp  
Enc.

DEFENDANTS' STATEMENT OF MATERIAL FACTS  
IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

24a

-----X  
JOYCE J. BEAM,

CIVIL ACTION

Plaintiff

73 Civ. 2384

vs.

Judge Pierce

INTERNATIONAL ORGANIZATION OF  
MASTERS, MATES AND PILOTS, ET.AL.,  
Defendants

-----X  
Defendants' Statement of Material Facts

1. The Plaintiff, widow of Russell Beam and his named beneficiary, is suing to recover an accidental death benefit provided under the Rules and Regulations of the MM&P Welfare Plan.

2. The MM&P Welfare Plan is a joint labor-management trust whose trustees are specifically given full authority to determine all questions of the nature, amount and duration of benefits, and to interpret and determine coverage and eligibility and the other provisions of the Rules and Regulations.

3. The accidental death benefit involved in this case is provided in Section 6 of Article III of the Rules and Regulations, and is payable when the loss is a result of "bodily injuries sustained solely through external, violent and accidental means, directly and independently of all other causes." No payment is to be made for any loss caused "wholly or partly, directly or indirectly, by disease, or bodily or mental infirmity, or medical or surgical treatment thereof."

The decedent, who was reportedly on an alcoholic binge and had a history of chronic pancreatitis, received



Defendants' Statement of Material Facts 25a

25% third degree burns of the body area in a fire on February 12, 1971. He was treated in a hospital by a Dr. Philip F. Parshley until his death on March 2, 1973.

5. The official death certificate, signed by Dr. Parshley, was the only evidentiary material furnished to the Trustees in support of the application for death benefits. The certificate stated that the cause of death was "acute and Chronic pancreatitis" due to "acute and chronic alcoholism." The certificate also stated that a contributing factor was the said burns received in an accidental fire.

6. At the request of the Welfare Plan, the attending physician explained in a letter the events and conditions then existing which led to the death.

6. The independent medical advisor and arbiter of the Trustees, basing his opinion on the letter of the attending physician and the death certificate found that the cause of death was "acute Exacerbation of a Chronic Pancreatitis". He also give the opinion that there was "not sufficient evidence to warrant an expression of opinion as whether the cause of death was, in any way, accidental."

7. Upon the facts presented to them, the Trustees determined that, although the decedent was eligible for the ordinary death benefit, the accidental death benefit was not payable.

DEFENDANTS' BRIEF IN SUPPORT OF MOTION

26a

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X  
JOYCE J. BEAM,  
Plaintiff

vs.

CIVIL ACTION

INTERNATIONAL ORGANIZATION OF  
MASTER, MATES AND PILOTS, et. al.,  
Defendants

73 Civ. 2384

Judge Pierce  
-----X

DEFENDANTS' BRIEF IN SUPPORT OF MOTION  
FOR SUMMARY JUDGMENT

This is an action by the widow and beneficiary of the decedent, Russell Beame, to recover an accidental death benefit provided under the Rules and Regulations of the MM&P Welfare Plan.

The MM&P Welfare Plan is a trust fund established under the provisions of the Labor-Management Relations Act of 1947, and jointly managed by trustees appointed by the International Organization of Masters, Mates and Pilots and American steamship companies having collective bargaining agreements with the Union.

The benefits provided are self-insured, and, as will be pointed out subsequently, the Trustees have been given broad authority as to the determination of all



questions of the nature, amount and duration of benefits and the interpretation of the Rules and Regulations establishing them.

The particular benefit involved herein is set forth in Section 6 of Article III of the Rules and Regulations, as follows:

"Section 6. Death or Dismemberment by Accidental Means. If an Employee, while eligible hereunder, suffers any of the losses described in Section 7 of this Article, as a result of bodily injuries sustained solely through external, violent and accidental means, directly and independently of all other causes, and within ninety days from the date of such injuries, the Trustees shall pay to the Employee, if living, otherwise to the beneficiary, the amount of benefit specified for such loss in Section 7 of this Article, provided, however, that no payment shall be made for any loss caused wholly or partly, directly or indirectly, by

(a) disease, or bodily or mental infirmity or medical or surgical treatment thereof; \* \* \* (underscoring added)

#### THE FACTS

The official death certificate, signed by Dr. Parshley, the attending physician, was submitted by the Plaintiff in support of the application for death benefits. The certificate stated that the cause of death was "acute and chronic pancreatitis" due to "acute and

chronic alcoholism". The certificate also stated that a contributing cause was "25% third degree burns of the body area" suffered in an accidental fire some 18 days prior to death. The certificate is annexed as Exhibit A.

The Welfare Plan requested an elaboration of this certificate from the attending physician and received an answering letter from him, annexed as Exhibit B, stating that from information forwarded by Plaintiff, the decedent had been on a periodic alcohol binge when the fire occurred, and that because of his chronic pancreatitis condition and the intake of alcohol, which was cut-off, the burns contributed to the acute pancreatitis which caused his death.

The Trustees then submitted the record to Dr. Joseph B. Logue who has acted for many years as the medical advisor and medical arbiter for the Plan. He gave his opinion that the cause of death was "Acute Exacerbation of a Chronic Pancreatitis." and that there was not enough evidence to "warrant an expression of opinion as whether the cause of death was, in any way, accidental." This opinion is annexed as Exhibit C.

No other evidence or opinions have been submitted by the Plaintiff.

On the basis of the evidence presented to them, the Trustees determined that the accidental death benefit was not payable under Section 6 of Article III.



AUTHORITY OF TRUSTEES

It has generally been held that because of the varying interests of unions, contributing employers and the employee beneficiaries and other complexities, that Trustees are allowed considerable discretion in administering the large labor-management trust funds. Here, in addition, the Trustees have been specically given broad authority.

As set forth fully in the affidavit of Mr. Maher, in Section 1 of Article IV of the Agreement and Declaration of Trust, the Trustees have full authority to "determine all questions of the nature, amount and duration of benefits." In Section 2, they have been given full authority to "determine all questions of coverage and eligibility."

In Article XIV of the Rules and Regulations, establishing the benefits, which were adopted when the Welfare Plan became self-insured, the Trustees expressly reserved the right, in their sole discretion to "interpret the provisions of these Rules and Regulations."

THE ISSUE

Both upon the pleadings and upon the basis of recent decisions, the issue raised herein is whether the Trustees of the Welfare Plan acted arbitrarily, capriciously and unreasonably in determining that the

accidental death payment was not payable under the provisions of Article III, Section 6 of the Rules and Regulations.

As in this case, where trustees of large trust funds have been given wide latitude in determining benefits and interpreting the provisions of the instruments involved, and where the trustees act within the scope of their powers - and no challenge to that is raised herein - courts will not interfere with any determination as long as it is not arbitrary, capricious or unreasonable.

In Gitelson v DuPont, 17 N.Y. 2d 46 (1966), the trustees of a pension plan had denied a pension to an applicant because, upon the evidence, they found him "dishonest" within the provisions of the trust. The New York Court of Appeals stated:

"The interpretation and construction of such documents as contracts and trust instruments are properly treated as questions of law and are reviewable by this court."

The Court dismissed the attack upon the decision of the trustees on the ground that

"the burden was upon the claimant to show that the board's ruling was motivated by bad faith, or arrived at by fraud or arbitrary action....(citing cases).... The rule then is that, without a showing of such dereliction on the part of the Board, its decision is final and conclusive."

The Court then reviewed the reasons why it found the action of the Board to have been reasonable.



In the landmark decision of Roark v. Boyle, 439 F. 2d 497 (D.C. Cir. 1970), the Court, referring to the earlier decision in Roark v Lewis, expressed this judicial reluctance to disturb trustees' decisions, as follows:

"We emphasized the need for judicial circumspection to avoid second guessing the discretionary judgments of the Trustees and held that an eligibility requirement duly promulgated by the Trustees could be set aside only if found to be arbitrary and capricious."

#### CONCLUSION

It is submitted that the Trustees did not act arbitrarily, capriciously or unreasonably in interpreting Section 6 of Article III of the Rules and Regulations so as to determine that the death of Russell Beam was not as a result of bodily injuries sustained "solely through external, violent and accidental means, directly and independently, of all other causes," and that such death was caused "wholly or partly, directly or indirectly, by disease, or bodily or mental infirmity."

In fact, the Trustees, acting cautiously to be completely fair to claimant, could hardly reach any other conclusion upon the facts and opinions presented to them. Even a contrary medical opinion, which actually could only be based on the facts presented to the Trustees, would not alter the reasonableness of the

decision of the Trustees.

Respectfully submitted,

Albert E. Rice

Albert E. Rice  
Attorney for the Defendants



PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT  
 IN THE UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISTRICT OF NEW YORK

JOYCE J. BEAM,	)	
	)	
Plaintiff,	)	
	)	73 Civ. 2384
v.	)	
	)	Judge Pierce
INTERNATIONAL ORGANIZATION OF	)	
MASTERS, MATES AND PILOTS, ET AL,	)	
	)	
Defendants.	)	

Plaintiff believes that the Court should not allow Defendants' Motion for Summary Judgment. New York law provides that an insurance policy providing coverage when death results from a violent or accidental means, must be interpreted liberally in favor of the claimant.

The classic opinion on this issue was written by Judge Cardozo in the case of Silverstein v. Metropolitan Life Insurance Company, 254 NY 81, 171 NE 914 (1930). Silverstein involved a plaintiff who was injured on the job; subsequently taken to the hospital and operated upon and as a result of the operation died of peritonitis. The questions before the Court was whether he was covered by an insurance policy which allowed recovery only if

# Plaintiff's Opposition to Motion for Summary Judgment

death came "by accidental means." Cardozo allowed recovery for the plaintiff and set forth several considerations for a Court to consider in determining whether a plaintiff died by accident or by disease. Cardozo observed: "A policy of insurance is not accepted with the thought that its coverage is to be restricted to an Appollo or a Hercules." Thus, a plaintiff may still recover under such a policy though he was suffering from "a disease" at the time of death.

As Cardozo noted: "In a strict or literal sense any departure from an ideal of perfect norm of health is a disease or infirmity. Something more, however, must be shown to exclude the effects of an accident in the coverage of a policy. The disease or infirmity must be so considerable or significant that it would be characterized as a disease or infirmity in the common speech of men . . ." Furthermore, the disease must be shown to be the overriding cause of death. The Court in Silverstein quoted with approval from Taylor v. New York Life Insurance Company, 176 Minn. 171, 174, 222 NW 912



Plaintiff's Opposition to Motion for Summary Judgment

"If a man with an abnormally thin skull be struck a blow which would not seriously injure a normal man but which causes his death it is perfectly plain that the cause of death was not the thinness of the skull but the receipt of the blow." (emphasis added)

Thus, under New York law, a plaintiff may recover under an insurance policy providing for benefits when death results from violent and accidental means, even though his death may have been contributed to by a pre-existing condition. For example, Novick v. Commercial Travelers Mutual Assurance Association, 118 NYS2d 533, (1953) the Court allowed plaintiff recovery under a policy insuring against loss solely through external, violent and accidental means. Plaintiff had been in an auto accident and claimed total disability, including injuries to his lower chest. Defendants denied that the injuries to the lower chest were accidental because plaintiff had suffered from a preexisting heart condition. Citing the Silverstein case, the Court allowed plaintiff recovery.

Plaintiff's Opposition to Motion for Summary Judgment

Similarly in Salzer v. Milwaukee Insurance Company, 19 NY2d 696 (1967) a plaintiff was likewise allowed recovery. In that case the policy provided for indemnity payments for accidental bodily injury not caused or contributed to by disease. Prior to the time of the accident, plaintiff had had a varicose vein condition. He claimed under the policy from an accident wherein he had been struck on the legs by the door of an exploding stove. The Court held that his prior vein condition did not preclude recovery under the policy.

In all such cases the plaintiff always has the burden of proof in showing that his prior disease or condition was not the primary cause of his death. McMartin v. Fidelity and Casualty Company of New York, 264 NY 220; 190 NE 414 (1934). However, New York Courts seem to be lenient in allowing plaintiff's recoveries so long as the prior condition was not the cause of the accident.

In Moran v. Massachusetts Mutual Life Insurance Company, 29 NYS2d 33 (1941) plaintiff, who was a chronic alcoholic, was denied recovery under a policy providing



### Plaintiff's Opposition to Motion for Summary Judgment

coverage only for death by "external, violent and accidental means." In the Moran case, plaintiff's alcoholism had led to his confinement in a hospital. On the first morning in the hospital he had had an alcoholic convulsion and died as a result of cracking his skull during the convulsion. Moran is distinguishable in that the accident came as a result of the prior condition. There was no supervening injury.

Our situation is different from that of Moran because plaintiff was not confined to a hospital because of his alcoholism. He came to a hospital as a result of suffering severe burns. Thus, plaintiff should be able to recover under the theories of Silverstein and Novick, cited supra.

For a general discussion of this point, see 45 CJS Section 776. As to construction and interpretation of the insurance contract New York has the general rule that any doubt in construction to be adopted must be resolved against exclusion of liability under the policy, e.g., any ambiguity in the policy is to be resolved

Plaintiff's Opposition to Motion for Summary Judgment  
against the insurer. See United States Life Insurance  
Company, 42 Misc. 2d 410, 248 Supp 2d 336 (1964) Blisky  
v. Mutual Benefit Health and Accident Association, 182  
Misc. 122, 49 NYS2d 848 (1944).

Plaintiff relies on the above authorities and believes  
that the Court should deny this Motion.



AFFIDAVIT OF RICHARD NOBLE IN OPPOSITION  
IN THE UNITED STATES DISTRICT COURT

39a

FOR THE SOUTHERN DISTRICT OF NEW YORK

JOYCE J. BEAM,

Plaintiff,

CIVIL ACTION

73 Civ. 2384

Judge Pierce

INTERNATIONAL ORGANIZATION OF  
MASTERS, MATES AND PILOTS, ET AL,

AFFIDAVIT

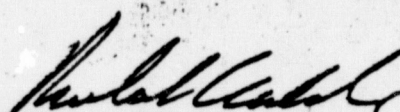
Defendants.

STATE OF OREGON

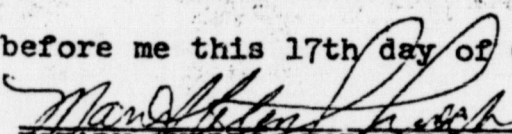
County of Multnomah

ss.

I, RICHARD NOBLE, being duly sworn, depose and say: I am one of the attorneys representing Joyce J. Beam. On behalf of Mrs. Beam I requested clarification of the medical report of Dr. Philip F. Parshley of April 15, 1971. Dr. Parshley has submitted a further report clarifying apparent ambiguities of his report of April 15, 1971 and I attach his report to this Affidavit for consideration by the Court, in opposition to the Defendants Motion for Summary Judgment.

  
Richard Noble

SUBSCRIBED AND SWORN TO before me this 17th day of October, 1973.

  
NOTARY PUBLIC FOR OREGON

My Commission Expires: May 16, 1974

NOV - 2 1973

EXHIBIT - LETTER DATED OCTOBER 17, 1973 BY DR.  
PARSHLEY TO RICHARD NOBLE ANNEXED TO THE FOREGOING  
AFFIDAVIT

40a

THE PORTLAND SURGICAL CENTER, P. C.  
SUITE 218

2800 NORTH VANCOUVER AVENUE

PORTLAND, OREGON 97227

TELEPHONE: 288-7535

HUGH D. COLVER, M.D.  
JACK S. BLUMBERG, M.D.  
LEROY E. GROSHONG, M.D.  
RODERICK L. JOHNSON, M.D.  
PHILIP F. PARSHLEY, JR., M.D.  
SURGEONS

JOHN D. WEBBER, M.D.

October 17, 1973

Mr. Richard Noble  
Standard Plaza, Suite 808  
1100 S. W. 6th Avenue  
Portland, Oregon 97204

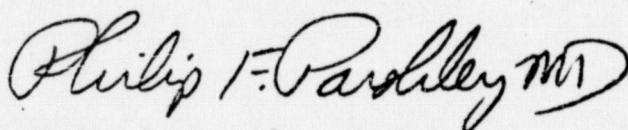
Re: Mr. Russell J. Beam, Chart No. 4989

Dear Mr. Noble:

In an attempt to clear up the statements I made in my letter to Mr. Fred J. Criscuolo dated April 15, 1971, and particularly in reference to the next to last paragraph in that letter, I am writing this current letter.

This patient died of acute and chronic pancreatitis, for which he was pre-disposed by his acute and chronic alcoholism. But for the accident resulting in burns covering 25% of his total body surface, there is no indication that this patient would have developed a massive acute pancreatitis and died at that time.

Sincerely,



Philip F. Parshley, M. D.

PFP:jr



OPINION OF THE COURT BELOW  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

JOYCE J. BEAM,

Plaintiff,

- v -

INTERNATIONAL ORGANIZATION OF MASTERS,  
MATES AND PILOTS, et al.,

Defendants.

- - - - -x

APPEARANCES:

JESSE ALAN EPSTEIN, ESQ.  
JULIAN, BLITZ & SCHLESINGER  
Two Lafayette Street  
New York, New York 10007

Attorneys for Plaintiff

ALBERT E. RICE, ESQ.  
60 East 42nd Street  
New York, New York 10017

Attorney for Defendants

LAWRENCE W. PIERCE, D.J.

## Opinion of the Court Below

MEMORANDUM AND ORDER

Plaintiff is the widow of a deceased member of the Masters, Mates and Pilots Welfare Plan (the Plan). She sues as beneficiary to recover accidental death benefits under the Plan. Jurisdiction is alleged to exist under 29 U.S.C. §185, and under 28 U.S.C. §1332, plaintiff being an Oregon citizen and the situs of the trust being in New York.

Defendants move for an order dismissing the complaint and directing that summary judgment be entered in favor of the defendants. For the reasons set forth below, defendants' motion is granted.

The Plan is a labor-management trust established to provide benefits for eligible licensed deck officers in the American Merchant Marine. As such it is the type of trust which has been designated as an exception to the Taft-Hartley Law's restrictions on payments and loans to employee representatives 29 U.S.C. §186(c)(5). Plaintiff asserts that the trustees of the fund have wrongfully denied her claim for accidental death benefits, under a



## Opinion of the Court Below

provision of the Trust Agreement which provides for such benefits only when the sole cause of death is accidental. She does not attack the provision itself.

Before proceeding to the merits, a brief discussion of the basis for subject matter jurisdiction is in order. There is a serious question as to whether this individual claim for benefits confers jurisdiction on this Court, as asserted by plaintiff, under the federal labor laws. The Court is cognizant of a line of cases which has developed, chiefly in the District of Columbia, which holds that district courts have jurisdiction over complaints concerning, in the main, eligibility requirements of these funds. See, e.g., Roark v. Boyle, 439 F.2d 497 (D.C. Cir. 1970); Kosty v. Lewis, 319 F.2d 744 (D.C. Cir. 1963). See also, Moglia v. Georghegan, 267 F.Supp. 641 (S.D.N.Y. 1967), aff'd, 403 F.2d 110 (2d Cir. 1969), cert. denied, 394 U.S. 919 (1969), where the Second Circuit considered the merits of an individual claim and decided that the interpretation of an eligibility requirement asserted by a beneficiary would have led the trustees to a violation

## Opinion of the Court Below

of 29 U.S.C. §186(c)(5). But all of these cases appear to deal ultimately with the trustees' interpretations of structural provisions of the fund, as they relate to 29 U.S.C. §186(c)(5), and do not, in this Court's view, stand for the proposition that a federal district court has jurisdiction when the only issue is the trustees' decision with respect to the circumstances of an eligible member's death. This is the only issue in the instant case. See the distinction drawn in Insley v. Joyce, 330 F.Supp. 1228 (N.D. Ill. 1971). These federal labor laws are not foundation stones for federal court management of union trust funds. Bowers v. Ulpiano Casal, Inc., 393 F.2d 421 (1st Cir. 1968); Fiorelli v. Kelewer, 339 F.Supp. 796 (E.D. Pa. 1972); Insley v. Joyce, supra; Moses v. Ammond, 162 F. Supp. 866 (S.D.N.Y. 1958). Where a right sought to be enforced is so uniquely personal and private as to be outside the pale of a federal labor question, this Court has no jurisdiction. Cf. O'Rourke v. Breakstone Bros., Inc., 218 F.Supp. 648 (S.D.N.Y. 1963); Snider v. All State Administrators,



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Inc., 481 F.2d 387 (5th Cir. 1973). The day to day administration of these funds is a matter of peculiar concern to the State courts. See, In Re Thomas Thatcher v. United Construction Workers, et al., 10 N.Y. 2d 439 (1963); N.Y. Insurance Law, §§37-37q (McKinney's 1966); N.Y. Banking Law, §§60-75 (McKinney's 1971).

This jurisdictional issue would require extended analysis here, but for plaintiff's apparently proper assertion of this Court's diversity jurisdiction. But, inasmuch as the standard of review of fiduciaries is the same whether federal law, as developed in the eligibility cases, or state law is applied--see, e.g., Kosty v. Lewis, supra, 319 F.2d at 747; Gitelson v. DuPont, 17 N.Y. 46,49 (1966)--this Court will deal with this action as a diversity action without unnecessarily deciding the federal labor law jurisdictional issue. As a diversity action, both parties apparently agree that New York law is controlling.

The Trustees of the Plan at issue here have been given the full authority, under Section 1 of Article IV

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of the Agreement and Declaration of Trust

" . . . to determine all questions of the nature, amount and duration of benefits to be paid under the Plan based on what it is estimated the Fund can provide without undue depletion or excessive accumulation."

Further, section 2 of the same Article IV gives the Trustees full authority

" . . . to determine all questions of coverage and eligibility to participate in and receive the benefits of the Plan and shall have the power to construe the provisions of this Agreement and the terms used herein and any such questions so determined or any construction so adopted by the majority of the Trustees shall be binding upon all parties and persons concerned."

The Rules and Regulations adopted by the Trustees set forth the various benefits provided by the Plan.

Article XIV of these Rules and Regulations provides:

"In order that the Trustees may carry out their obligation to maintain within the limits of the funds available to them a sound and economic program dedicated to providing the maximum benefits for Employees as a whole, the Trustees expressly reserve the right in their sole discretion, and without notice to Employees, Employers, the Union or



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others affected hereby, but upon a non-discriminatory basis . . .

- (d) to interpret the provisions of these Rules and Regulations."

Given the nature of the Plan, and these explicit grants of authority to the Trustees, this Court's scope of inquiry is very narrow. The Trustees are vested with the sole authority to determine all matters relating to receipt of benefits of the Plan and to construe the provisions of the Agreement. This Court is limited to the issue of whether or not the Trustees' decision was arbitrary or capricious, a product of bad faith, or not supported by the evidence which was before them when they made the decision. See, Gitelson v. DuPont, supra. In other words, there does not rest in this court a general power to dictate, rephrase or interfere with the provisions of an agreement freely entered into between the Union and the Employees for the benefit of the employees, regulating coverage and eligibility, and imposing conditions on both. These are matters which are under the control of the Trustees Moglia v. Georghegan,

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267 F.Supp. at 645.

Therefore, this Court's task is to determine whether there is a disputed fact with respect to the exercise of the Trustees' authority, and if not, whether or not they acted arbitrarily, capriciously or on insufficient evidence when they made the decision to deny plaintiff accidental death benefits.

The underlying facts are apparently undisputed and are, further, deemed so for failure of respondent to file a statement of material facts pursuant to Local Rule 9(g) of this Court.

The decedent, who was reportedly on an alcoholic binge and had a history of chronic pancreatitis, received 25% third degree burns of the body area in a fire on February 12, 1971, which occurred in his room in a motel in Oregon. He was treated in a hospital by Dr. Philip F. Parshley until his death on March 2, 1971. His widow, the plaintiff, timely applied to the Trustees for death benefits under the Plan. It is undisputed that the decedent was eligible under the Plan. Among the ben-



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efits available was a death benefit of approximately \$20,000 and an accidental death benefit of an additional \$20,000. Under the provisions of the Trust Agreement plaintiff was paid the first \$20,000 by the Fund; but the Trustees, after due investigation, declined to pay the accidental death benefit.

The Trustee relied upon Article III of the Rules and Regulations, Section 6, which provides:

"If an Employee, . . . suffers any of the losses described in Section 7 [Schedule of Indemnities, including proviso for full amount payment for loss of life] of this Article, as a result of bodily injuries sustained solely through external, violent and accidental means, directly and independently of all other causes . . . the Trustee shall pay . . . the beneficiary . . . provided however, that no payment shall be made for any loss caused wholly or partly, directly or indirectly, by  
(a) disease, or bodily or mental infirmity or medical or surgical treatment thereof  
. . ."

The major piece of evidence relied upon by the Trustee in deciding the accidental benefit claim was the official death certificate signed by Dr. Parshley, the attending physician. This was the only evidentiary mate-

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rial furnished to the Trustees in support of the application for benefits. The certificate stated that the cause of death was "acute and chronic pancreatitis" due to "acute and chronic alcoholism." The certificate noted as another condition contributing to death that the decedent had "25% degree body surface burns."

At the request of the Plan, Dr. Parshley elaborated in a letter dated April 15, 1971, addressed to the Plan's Claims Manager:

"... the patient's history, obtained mostly from his wife at that time, was that he had had a chronic alcoholic problem mostly in the form of acute binge drinking, for many years. An episode of apparently documented pancreatitis occurred approximately ten years prior to this. The patient was allegedly on one of his alcoholic binges, living in a motel room here in Portland when the fire occurred on the 12th of February, 1971 . . .

In trying to make a determination as to whether this was a death due to an accident or an illness, I think the following rather logical sequence will apply. The patient, in an acute alcoholic binge, was seriously burned. The extent of his burn at his age, with his past history of alcoholism, carried a significant risk of mortality. The incident of the burn, quite naturally, interrupted his alcohol intake and at the same time produced a massive



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body stress. This particular combination of circumstances is a well known etiologic factor for development of an acute massive pancreatitis which occurred in this instance. The pancreatitis itself was the cause of his death and not a complication of the burn surface itself. However, I think that one could well say that the occurrence of the accident led to a series of circumstances resulting in death."

The Trustees then submitted the record to the independent medical advisor and arbiter of the Plan. He reported in a short memorandum dated July 1, 1971 that the cause of death was "Acute Exacerbation of a Chronic Pancreatitis;" and further stated that there was "not enough evidence to warrant an expression of opinion as to whether the cause of death was, in any way, accidental."

Upon these facts and opinions, the Trustees determined that the accidental death benefit was not payable. Plaintiff, thereafter, in May of 1973, commenced this suit in this district, without ever providing the Trustees with further documentation or information as to her claim.

After the motion for summary judgment was filed in

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September of 1973, plaintiff requested clarification from Dr. Parshley and received a letter which is appended to her "Motion in Opposition to Defendants' Motion for Summary Judgment." This letter is dated October 17, 1973 and restates essentially what the Doctor concluded in his letter to the Fund in 1971:

" . . . the patient died of acute and chronic pancreatitis, for which he was predisposed by his acute and chronic alcoholism. But for the accident resulting in burns covering 25% of his total body surface, there is no indication that this patient would have developed a massive acute pancreatitis and died at that time."

Clearly this letter was not before the Trustees when they made their decision and is therefore not relevant to the issues here, but the Court should note that even if the Doctor's letter had been before the Trustees, the result here would be the same.

If the question was whether or not the decedent died of accidental causes this Court would have no difficulty finding that material issues of fact exist, and would deny the defendants' motion for summary judgment. But



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such is not the question. Rather, given the authority vested in the Trustees and the provisions of Article III, Section 6 of the Plan's Rules and Regulations, the question is did the Trustees apply such provisions arbitrarily and capriciously?

This Court thinks not. It is possible that under the liberal construction which New York law places upon insurance contracts, see Silverstein v. Metropolitan Life Insurance Co., 254 N.Y. 81 (1930), that a court might have reached a decision different from the Trustees'. But the decision reached by the Trustees is not so contrary to the law as to constitute arbitrary and capricious action. They were presented, as the sole evidence in support of plaintiff's claim, with a death certificate which identified the cause of death as something which could very well be characterized as a "bodily infirmity." Because apparently accidental burns were named as a contributing factor, the Trustees queried the attending physician, and then the Plan's medical advisor, for clarification. The responses of both, at the most,

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said that the accidental burns contributed to the death by stopping alcohol intake and the consequent withdrawal, along with the shock of the burns, led to the acute pancreatitis from which the decedent died.

The Rules and Regulations cited above, which are not attached here, state that death benefits are available for "loss of life sustained solely through external, violent and accidental means, directly and independently of all other causes . . ." Further, the same Rules and Regulations specifically provide that "no payment shall be made for any loss caused wholly or partly, directly or indirectly, by . . . bodily infirmity . . ."

The Trustees' application of Section 6 was rational and well within the plain meaning of the words. Even though the face of the death certificate indicated that the cause of death was not solely through accidental means, and was at least partly and indirectly caused by bodily infirmity, the Trustees thereafter made a reasonable effort to clarify the death certificate. Plaintiff, whose burden it was, given the content of the death cer-



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tificate, provided no other documentation.

There being no material issue of fact as to the underlying incident, and there being no material issue of fact with respect to the exercise of the Trustees' discretion, this Court finds that the Trustees' decision to deny accidental death benefits to plaintiff was not arbitrary or capricious. Defendants' motion to dismiss the complaint, and for entry of summary judgment in their favor, is hereby granted.

Settle Order on 10 days notice, by May 6, 1974.

SO ORDERED.

Dated: New York, New York  
April 1, 1974

s/ Lawrence W. Pierce  
LAWRENCE W. PIERCE  
U. S. D. J.

## U.S. COURT OF APPEALS:SECOND CIRCUIT

Index No.

BEAM,

Appellant,

against

Affidavit of Personal Service

INTERNATIONAL ORGANIZATION OF MASTERS, MATES,  
AND PILOTS, et al, Appellees.

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

I, James Steele, being duly sworn,  
deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

250 West 146th Street, New York, New York  
That on the 2nd day of August 1974 at 60 East 42nd Street, New York

deponent served the annexed *Appellant's Appendix* upon

Albert E. Rice-Attorney for Appellees

the in this action by delivering *2* true copies thereof to said individual  
personally. Deponent knew the person so served to be the person mentioned and described in said  
papers as the Attorney(s) herein,

Sworn to before me, this 2nd  
day of August 1974

*James Steele*  
Print name beneath signature

JAMES STEELE

*Robert T. Brin*  
ROBERT T. BRIN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 31 - 0418950  
QUALIFIED IN NEW YORK COUNTY  
COMMISSION EXPIRES MARCH 30, 1975